

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DONALD JOSHUA SMITH,

Plaintiff,

v.

CHAUDHRY UZMA, *et al.*,

Defendants.

Case No. 2:24-cv-0683-TLN-JDP (P)

ORDER

Plaintiff, a state prisoner proceeding without counsel, commenced this action against defendants Chaudhry Uzma and Gill Amandeep. ECF No. 10. After finding service of the complaint appropriate, I stayed this action for 120 days and referred it to ADR. ECF No. 40. On April 28, 2025, defendants filed motions to opt out of ADR. ECF Nos. 43 & 44. In those filings, defendants have made the court aware that plaintiff recently passed away. *See id.*

On May 6, 2025, defendant Chaudhry filed a formal notice of suggestion of death for plaintiff. ECF No. 45. Therein, defendant states that he does not know the identify of the successor of interest in plaintiff's estate or the identify of the personal representative for plaintiff's estate. *Id.* at 1. Defendant was unable to locate an active probate matters for plaintiff. *Id.* at 2. Defendant has learned through the California Health Care Facility's Litigation Coordinator that plaintiff listed two contacts in case of an emergency, his two sisters: Wanda Williams and Phyllis Allen. *Id.* at 1. Defendant served a copy of the May 6 notice on Wanda

Williams, *see id.* at 12, but service was unsuccessful after three attempts on Phyllis Allen, *see id.* at 4.

Federal Rule of Civil Procedure 25 establishes the process for moving forward after a party to a civil action has died. Of relevance here, it provides that “[i]f a party dies and the claim is not extinguished, the court may order substitution of a proper party.” Fed. R. Civ. P. 25(a). If the decedent’s successor or representative do not file a motion for substitution “within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.” *Id.* Under California law—which federal courts apply in determining survival of a claim under 42 U.S.C. § 1983—a cause of action against a person is generally not extinguished by that person’s death. Cal. Civ. Proc. Code § 377.20(a); *see Robertson v. Wegmann*, 436 U.S. 584, 590 (1978).

The Ninth Circuit has explained that Rule 25 requires two affirmative steps to trigger the 90-day period:

First, a party must formally suggest the death of the party upon the record. Second, the suggesting party must serve other parties and nonparty successors or representatives of the deceased with a suggestion of death in the same manner as required for service of the motion to substitute. Thus, a party may be served the suggestion of death by service on his or her attorney, while nonparty successors or representatives of the deceased party must be served the suggestion of death in the manner provided by Rule 4 for the service of a summons.

*Barlow v. Ground*, 39 F.3d 231, 233 (9th Cir. 1994) (internal citations omitted). Under *Barlow*, the defendant has some obligation to identify the plaintiff’s representative or successor and to serve the notice of death on that party. *See Gilmore v. Lockard*, 936 F.3d 857, 865-68 (9th Cir. 2019).

District courts in the Ninth Circuit have generally required defendants to make a “good faith effort” in identifying and locating the successors or representatives of the deceased when filing a suggestion of death. *See, e.g., Gravesbey v. Byrd-Hunt*, No. 3:19-cv-0372-CABRBM, 2020 WL 4226624 (S.D. Cal. July 23, 2020) (citing cases). Mailing the suggestion of death to the deceased’s address of record has met the “good faith effort” standard for attempting to contact a representative or successor of a plaintiff proceeding pro se as prisoner. *See Meyers v. Cty. of Los*

1 *Angeles*, No. cv 10-05225 DMG AJW, 2011 WL 7164461, at \*3 (C.D. Cal. Dec. 19, 2011)  
2 (“Requiring defendants to do more to ascertain whether a representative or successor for plaintiff  
3 exists is burdensome and impractical.”); *Valez v. Corr. Corp. of Am.*, No. cv-20-01400-PHX-  
4 JAT, 2021 WL 3492065, at \*1 (D. Ariz. Aug. 9, 2021) (finding that serving the notice of death on  
5 the plaintiff’s identified next-of-kin was an appropriate good faith effort to contact the plaintiff’s  
6 representatives or successor).

7 Defendant has complied with the requirements of Rule 25. *See* ECF No. 45.  
8 Accordingly, the court will stay this action for 120 days to afford plaintiff’s representative or  
9 successor an opportunity to file a motion for substitution.

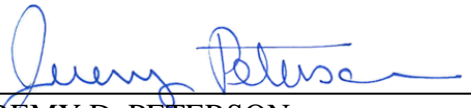
10 Accordingly, it is hereby ORDERED that:

11 1. Defendants’ motion to opt-out of ADR, ECF Nos. 43 & 44, are GRANTED. The stay  
12 initiated on March 13, 2025, is lifted.

13 2. A new stay is initiated for 120 days to afford plaintiff’s representative or successor an  
14 opportunity to file a motion for substitution.

15 IT IS SO ORDERED.  
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17 Dated: May 22, 2025

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19 JEREMY D. PETERSON  
20 UNITED STATES MAGISTRATE JUDGE  
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